

*City of Burien*

BURIEN PLANNING COMMISSION

April 22, 2015

7:00 p.m.

Multipurpose Room/Council Chambers

MINUTES

*To hear the Planning Commission's full discussion of a specific topic or the complete meeting, the following resources are available:*

- Watch the video-stream available on the City website, [www.burienwa.gov](http://www.burienwa.gov)
- Check out a DVD of the Council Meeting from the Burien Library
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**CALL TO ORDER**

Chair Jim Clingan called the April 22, 2015, meeting of the Burien Planning Commission to order at 7:00 p.m.

**ROLL CALL**

Present: Jim Clingan, Butch Henderson, Curtis Olsen, Amy Rosenfield

Absent: Joey Martinez, Brooks Stanfield and Douglas Weber

Administrative staff present: Chip Davis, Community Development director; David Johanson, senior planner

**AGENDA CONFIRMATION**

**Direction/Action**

**Motion** was made by Commissioner Henderson, seconded by Commissioner Olsen, to approve the agenda for the April 22, 2015, meeting. Motion passed 4-0.

**APPROVAL OF MINUTES**

**Direction/Action**

**Motion** was made by Commissioner Henderson, seconded by Commissioner Rosenfield, and passed 4-0 to approve the minutes of the March 25, 2015, meeting.

**PUBLIC COMMENT**

**Chestine Edgar**, 1811 SW 152<sup>nd</sup> St, read a list of changes she believes should be made to the Chapter 19.40 Critical Areas code draft that was included in the meeting packet. She said she will have more comments in the future.

**OLD BUSINESS**

None.

**NEW BUSINESS**

A. Presentation on Amendments to BMC Chapter 19.40, Critical Areas

David Johanson, senior planner, explained that this evening the commissioners and public are being introduced to the first draft of the updated Critical Areas ordinance, with the intention of the commission discussing and providing comments on it. He noted that all of the documents will be

available on a Critical Areas Ordinance page on the City's website as well as in the Planning Commission packets in the website's Agenda Center. Mr. Johanson said staff already has received preliminary comments from the state Department of Ecology (DOE), one of the primary agencies interested in the City's update process.

Mr. Johanson introduced Tess Brandon and Nell Lund from The Watershed Company, the City's consultants on the Critical Areas Ordinance update. They presented the proposed changes and explained the reasoning behind them. The proposed changes have been broken down into specific types: editorial/wording changes for document clarity, consistency, and/or usability; document organization; content change to administrative, designation or other non-protective regulations; content change to protective regulations; and those to be determined through discussion by Planning Commission/Council.

Following the presentation, Commissioner Henderson asked what the impact of increasing stream buffers will have on existing structures. Mr. Johanson replied that it may impact certain properties, but a majority of Burien's streams are in steep slope critical areas where structures are not located anyway. If the buffer does include a structure, he continued, the structure then becomes non-conforming with regard to the stream or wetland buffer. Ms. Brandon added that there also is a possibility an individual buffer may be reduced if conditions warrant it. Mr. Johanson concurred, saying the City's experience has shown that many of those problems can be solved through buffer averaging or reduction with enhancement.

Chair Clingan asked how a "habitat score," as shown in Table 2 of Attachment 4 in the meeting packet, is determined. Ms. Lund explained that the score is determined by completing a DOE wetland rating form, which tabulates point values in three categories: water quality, hydrologic functions and habitat functions.

Regarding item #9 on the matrix, Commissioner Rosenfield asked why the proposed change relating to adjacency to a bald eagle nest mentions 660 feet but not the 330 feet for activity not visible from the nest noted in the justification column. Ms. Brandon replied that this particular regulation is simply defining adjacency that would trigger consultation with US Fish and Wildlife, which after evaluation might back the buffer down to 330 feet.

Ms. Rosenfield then asked, with regard to #11 on the matrix, what needs to be done to resolve the uncertainty that may occur when there is a lack of valid scientific information about the risk to critical area function resulting from a proposed development or land use activity. Ms. Brandon said that proposed language highlights the precautionary principle – "if we're not sure, don't build. Get more information."

Regarding #23 on the matrix, Commissioner Rosenfield asked if what Ms. Edgar said in her comments earlier about certain things being allowed in the setbacks that are not consistent with the Shoreline Master Program (SMP) are true. Mr. Johanson said that's something that can be discussed in further detail since the language in #23, prior to the proposed edits, already is in the critical areas ordinance. He said comparisons to the SMP are a bit challenging because the setback from a buffer in #23 will apply only to those critical areas described in this Zoning Code chapter. The SMP is another layer, he noted. If there are no critical areas present and you're within shoreline jurisdiction, the SMP applies. The most restrictive always applies, so in the case where there is a wetland with a buffer of, for instance, 50 feet and the shoreline buffer is only 45 feet, the wetland buffer applies and then you would apply the setback standard. He noted perhaps there should be discussion about the scale of any structures within the setback, none of which are houses.

Commissioner Olsen asked for clarification on #10, "...in accordance with mitigation sequencing (BMC 19.40.170) to avoid, minimize, and restore all adverse impacts," asking that the word "restore" be removed. Ms. Brandon said that since the mitigation sequencing language has been added, everything after that can be deleted.

Regarding #18, Commissioner Olsen said the language is cut off. Ms. Brandon said she did not retype the entire bulleted item from the existing code and suggested looking at the actual code document for the complete language.

Commissioner Rosenfield asked what the ratios in the table in #81, Wetlands Mitigation, represent. Ms. Lund replied that the ratios are required to compensate for temporal loss of wetland functions and uncertainty over performance of replacement wetlands based on DOE's review of past projects. For instance, if a one-acre Category I wetland is destroyed, a four-acre Category I wetland must be created to replace it.

Commissioner Olsen asked how the process of monitoring projects to ensure the mitigation has fulfilled the requirements of the critical areas ordinance. Mr. Johanson replied that the applicant, as part of his mitigation and monitoring plan, is obligated to have a qualified professional periodically check the mitigation project and provide a report to the City.

Mr. Johanson said he had received some questions from Commissioner Stanfield, who could not attend the meeting. The first question asked for the reasoning behind wetlands and lakes and why they are assigned greatly different buffers. Mr. Johanson stated that the difference between lakes and wetlands is that they have different functions and values. Wetlands sometimes need more protection, therefore the buffers are larger. In some cases lakes do not have wetlands associated with them, in which case the buffer requirement will be different to reflect the functions and values that need to be protected.

The second question, in reference to #66, was "are plantings in wetland buffers required or just desired?" Ms. Brandon answered that yes, there are other regulations in the same code section that require plantings.

The third question was "does having fish in one portion of a water body, like a stream, designate the entire water body as having fish?" Mr. Johanson gave the example of the long streams in Burien; if a fish is located at the top of the stream, but further down the stream is blocked by a road, does that mean the whole stream has the designation of having fish? He said the answer is that a critical area study looks at that segment of the stream impacted by a proposed development to determine which designation applies.

The fourth question asked for the definition of a lake. Mr. Johanson said Burien's code does not have a definition of lake, but a lake is considered a fish and wildlife habitat conservation area.

Commissioner Olsen asked if there is a comprehensive list of plants and vegetation available to the public. Mr. Johanson responded that DOE and other sources have many publications available with lists of appropriate plants. King County has resources available as well.

Chair Clingan asked what the surface area of Arbor Lake is. Mr. Johanson said he does not know the surface area, but it falls under the fish and wildlife conservation area, although if there are wetlands there, the wetland regulations would apply. He added that the lake is small enough that the SMP does not apply.

Commissioner Rosenfield said, regarding #68, the categorization language defining each of the four wetland categories was deleted but she did not see a replacement for it. Ms. Lund noted that they are defined in the DOE Wetland Rating System, which has a large guidance document accompanying it. She said because of the length of the descriptions it was decided to just refer to the state document, but if the commissioners prefer the information to be embedded in the Burien code, that can be done.

Commissioner Rosenfield then commented, regarding #87, that in the consultants' presentation there was a range of stream buffers, but in the proposed code the less restrictive buffers are listed. She wondered why that is. Ms. Brandon explained that the range is not intended to be in the code; it is a range of options, compliant with best available science, from which cities can choose. They chose the buffers representing the least amount of change from the current code, given that Burien's streams are in urbanized areas.

Commissioner Olsen asked if the activities by homeowners will be more restricted than normal in the setbacks from the buffers. Mr. Johanson replied that they would not be any more restricted than what is

written in the code. There would be education about the benefits of not using lawn and garden chemicals, but the code is the standard for actual restrictions.

There being no further questions from the commissioners, Mr. Johanson asked if the commissioners had any sense of which of the two options for wetland buffers they are leaning toward or if they need any more information.

Chair Clingan said he's leaning toward Option A because it's less restrictive.

Commissioner Olsen said to him the concepts are very abstract; he thinks the information needs to be presented in a manner easily understood by all.

Commissioner Rosenfield said one of the main differences between the two options is that Option B considers land-use intensity and Option A does not. She said she was wondering why staff is leaning toward Option A when it doesn't consider land-use intensity. Mr. Johanson replied that staff chose the approach of matching the buffers to the function and values of the wetland rather than to the intensity of the land use. Ms. Brandon said DOE's thinking is that in general small city land use tends to be moderate to high, but rarely low. To simplify things, in Option A the DOE requires measures to minimize impacts to wetlands and, as a result, decreases the buffer sizes, which ultimately may result in buffers that are more functional.

**Daniel Cosgrove, 17202 Des Moines Memorial Dr.,** asked if owners of parcels with critical areas are notified of potential changes to the code and map, otherwise how do they know of the potential changes or how to follow any of the regulations.

Mr. Johanson responded that when a proposed development project comes in for a permit it is reviewed under these standards. The critical area buffers are established and marked in the field, and documents identifying that there is critical area are recorded onto the property. Other times, he continued, when there is no permitted work going on with the property, but some sort of activity is occurring, the City may get calls reporting the work. Then the City contacts the property owner and makes sure things are being done according to the code.

Mr. Davis pointed out that the critical areas map is a general indicator for Planning staff that a critical area may be present; over time the map is updated with information documented from development proposals. He added that owners of property indicated as possible critical areas on the map are not notified that they are on the map because in many cases the City has no verification until a critical area study is done that the site actually contains critical area. He said as far as notifying people about this update process, the City approached it as a very general notice to the entire city rather than trying to anticipate which individual properties would be affected depending upon which buffer width scenarios were used and making a notification list from that. He acknowledged it is a good suggestion to notify specific property owners; his concern is that the City would miss a property.

Mr. Cosgrove said the changes to the regulations have a large financial impact on homeowners that could be affected, given that critical area reviews cost thousands of dollars. He thinks there are a lot of people missing out, not even realizing that they ought to be paying attention to the proposed updates. Mr. Davis thanked Mr. Cosgrove for his comments and said the City will be looking at its public noticing based on his comments.

Commissioner Olsen asked if the City keeps the five-year maintenance and monitoring plans on file and, if so, do they remain valid even if the properties are sold. Mr. Johanson responded that it runs with the land, not with the ownership; critical area notices are filed on the title.

Commissioner Rosenfield stated that she is leaning toward Option A because of the required measures to minimize impacts.

Mrs. Edgar questioned, the way the ordinance currently is written, the ability of property owners to maintain their yards and gardens without having to go to the Community Development Director each time to seek permission.

## **PLANNING COMMISSION COMMUNICATIONS**

None.

## **DIRECTOR'S REPORT**

Mr. Davis reviewed the commission's upcoming schedule, starting with a public hearing on May 13<sup>th</sup>. He encouraged the commissioners to contact staff at any time to ask questions instead of waiting for the next meeting.

## **ADJOURNMENT**

### **Direction/Action**

Commissioner Henderson moved for adjournment. Motion carried 4-0. The meeting adjourned at 8:49 p.m.

**APPROVED:** May 27, 2015

/s/ Jim Clingan, chair  
Planning Commission